

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ALBERTO ALFARO,

Plaintiff,

v.

DECISION AND ORDER

DAVID GERTIN, CHRISTOPHER
SUFRA, and ANTHONY RUSSO,

Defendants.

INTRODUCTION

Pro se plaintiff Alberto Alfaro (“Plaintiff”) initiated this action pursuant to 42 U.S.C. § 1983 asserting various violations of his constitutional rights. (Dkt. 1). Currently pending before the Court is a Report and Recommendation (the “R&R”) issued by United States Magistrate Judge Marian W. Payson recommending the denial of Defendants’ motion to dismiss. (Dkt. 30). For the reasons set forth below, the Court adopts the R&R in its entirety. As a result, Defendants’ motion to dismiss (Dkt. 26) is denied without prejudice.

BACKGROUND

As set forth in the R&R, Plaintiff did not appear for his scheduled deposition on December 20, 2023. (Dkt. 30 at 6). Counsel for Defendants rescheduled Plaintiff’s deposition for January 24, 2024, but he again did not appear. (*Id.*). Plaintiff did not communicate with Defendants’ counsel or otherwise respond to the deposition notices before or after the scheduled depositions. (*Id.*). On February 21, 2024, Defendants filed a

motion to dismiss based on Plaintiff's failure to attend the scheduled depositions. (*Id.*). Plaintiff opposed the motion, asserting that he did not receive the deposition notices in the mail. (*Id.* at 6-7).

On April 25, 2024, Judge Payson issued the R&R, recommending that Defendants' motion to dismiss be denied without prejudice to renewal should Plaintiff fail to appear for a rescheduled deposition. Judge Payson granted Defendants' alternative request for an extension of the scheduling order, which was issued that day. (Dkt. 30; Dkt. 31). No party filed objections to the R&R.

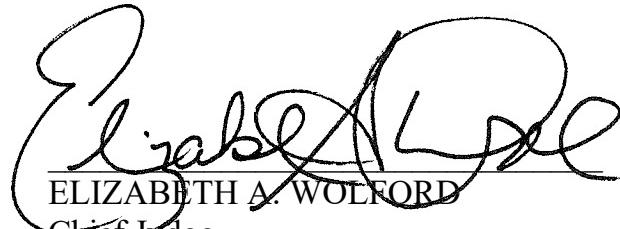
DISCUSSION

Pursuant to 28 U.S.C. § 636(b)(1), the parties had 14 days to file objections to the R&R. No objections were filed. The Court is not required to review *de novo* those portions of a report and recommendation to which objections were not filed. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure [to timely] object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). Notwithstanding the lack of objections, the Court has conducted a careful review of the R&R, as well as the prior proceedings in the case, and finds no reason to reject or modify the R&R.

CONCLUSION

For the foregoing reasons, the Court adopts the R&R (Dkt. 30) in its entirety and denies Defendants' motion to dismiss (Dkt. 26) without prejudice.

SO ORDERED.



ELIZABETH A. WOLFORD
Chief Judge
United States District Court

Dated: May 30, 2024
Rochester, New York